

**REMARKS**

Claims 1-19 are pending in the present application. In the Office Action, claims 1-19 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated U.S. Patent No. 6,101,378 (Barabash). The Examiner's rejections are respectfully traversed.

Independent claims 1, 9, 15, and 19 set forth, among other things, receiving unencrypted control codes and encrypted user data over a communications channel and transmitting an upstream data signal over the communications channel based on the control codes.

The position taken in the Final Office Action is that because Barabash is mute as to how the control codes are exchanged, it must necessarily flow that they are unencrypted. Barabash describes exchanging the user data in encrypted form, but does not even mention the control codes at all, other than in the claims. Hence, Barabash completely lacks enablement for the proposition put forth by the Examiner. The only reasonable position that may be taken in light of the lack of any mention at all of how the control codes are exchanged, is that the control codes are exchanged in the conventional manner, which is to encrypt the user data and control codes and extract the user data and the control codes in the protocol layer. If Barabash were to contemplate processing the control codes in a different manner, it would have at least been mentioned once in the specification.

By not mentioning the control codes in the specification, Barabash is at best indeterminate as to how the control codes are exchanged. To support a rejection under 35 U.S.C. § 102 the asserted proposition must "necessarily flow" from the disclosure. Given that Barabash is completely silent on the format of the control codes, the proposition that they must be unencrypted is indefensible.

For this reason alone, Barabash fails to teach or suggest receiving unencrypted control codes and encrypted user data over a communications channel and transmitting an upstream data signal over the communications channel based on the control codes. Applicants respectfully requests the rejection of claims 1, 9, 15, 19, and all claims depending therefrom be withdrawn.

The Final Office Action also asserts that because Barabash is silent as to the architecture used, it must necessarily flow that Barabash uses a software driver. Again, as Barabash does not mention a software driver at all, the only reasonable position is that a conventional approach is taken. Barabash does not teach or suggest physical layer hardware for processing control codes that is distinct from a processing unit that executes a software driver for implementing a protocol layer and interfacing with the physical layer hardware.

Applicant separates the configuration of the transmission parameters by the physical layer hardware from the user data processing performed by the software driver, which receives and decrypts the user data in a protocol layer. This separation prevents the co-opting of the driver from affecting the transmission activities controlled by the physical layer hardware unit. As Barabash is completely silent as to how the user data and control codes are processed, the position that Barabash necessarily teaches a software driver that processes encrypted user data independently from physical layer hardware that employs unencrypted control codes is again indefensible. For this additional reason, claim 1, and all claims depending therefrom, are allowable.

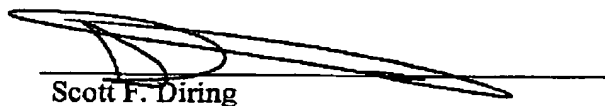
For at least the aforementioned reasons, Applicants respectfully submit that claims 1, 9, 15, 19, and all claims depending therefrom, are not anticipated by Barabash. Applicants request that the Examiner's rejections of claims 1-19 under 35 U.S.C. 102(e) be withdrawn.

Moreover, the dependent claims include additional features not taught or suggested by Barabash. The passages cited in the Office Action are general high level discussions, primarily in the summary and claims sections, that do not even suggest, much less provide an enabling teaching of, the features set forth in the claims. Applicants can only assume that the Office Action seeks to establish that all of these features are inherent in Barabash. The Final Office Action failed to provide additional guidance as to how these features are met by Barabash, as requested by Applicants.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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